

1 LAUREEN P. FRISTER, ESQ.
Nevada Bar No. 13217
2 VIVIENNE RAKOWSKY, ESQ.
Nevada Bar No. 9150
3 E-Mail: Laureen.Frister@lewisbrisbois.com
E-Mail: Vivienne.Rakowsky@lewisbrisbois.com
4 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
6385 S. Rainbow Blvd., Suite 600
5 Las Vegas, NV 89118
702.893.3383
6 FAX: 702.893.3789
Attorneys for Defendant Lowe's Home Centers,
7 *LLC d/b/a Lowe's*

8
9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 MARIA ROSARIO MUNOZ,

12 Plaintiff,

13 vs.

14 LOWE'S HOME CENTERS, LLC d/b/a
15 LOWE'S; and DOES I through X; inclusive;
and ROE CORPORATIONS I through X,
16 inclusive,

17 Defendants.

CASE NO. 2:22-cv-01168

**DEFENDANT LOWE'S HOME
CENTERS, LLC'S PETITION FOR
REMOVAL UNDER 28 U.S.C. § 1441
(DIVERSITY)**

18 Pursuant to 28 U.S.C. § 1441(b), Defendant LOWE'S HOME CENTERS, LLC d/b/a
19 LOWE'S ("Defendant"), by and through its counsel, LEWIS BRISBOIS BISGAARD & SMITH
20 LLP, files this Petition for Removal of Clark County District Court Case No. A-21-840107-C,
21 entitled *Maria Rosario Munoz.v. Lowe's Home Centers LLC, et.al.* and states as follows:

22 1. On August 25, 2021, Plaintiff MARIA ROSARIO MUNOZ ("Plaintiff") filed a
23 Complaint in the Eighth Judicial District Court, Clark County, Nevada, entitled *Maria Rosario*
24 *Munoz. v. Lowe's Home Centers, LLC* ("State Court Action"). Plaintiff's Complaint and
25 Summons, attached hereto as **Exhibits A and B**, respectively, constitute all of the pleadings
26 served on Defendant.

27 2. On August 30, 2020, Defendant was personally served with the Summons and
28

1 Complaint at LOWE’S HOME CENTERS, LLC d/b/a LOWE’S, 1000 Lowes Blvd., Mooresville,
 2 NC 28117-8520. *Plaintiff’s Notice of Service of Process*, attached hereto as **Exhibit C**.

3 3. This action is a civil action of which this Court has original jurisdiction under 28
 4 U.S.C. § 1332, and is one which may be removed to this Court pursuant to the provisions of 28
 5 U.S.C. § 1441(b) in that it is a civil action between citizens of different states and the matter in
 6 controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

7 4. Venue is appropriate in the unofficial Southern District of the Court pursuant to 28
 8 U.S.C. §§ 1393(b)(2) and (c); and LR IA6-1.

9 5. Defendant is informed and believes that Plaintiff was, at the time of filing the State
 10 Court Action, and is still is a resident of Clark County, State of Nevada. *Exhibit A* at ¶ 1.
 11 Defendant is a corporation organized and existing under the laws of the State of North Carolina,
 12 with its principal place of business in the State of North Carolina. Diversity among the parties
 13 exists.

14 6. No other Defendants have appeared in this matter, and no other Defendants have
 15 been identified. *Exhibit A*.

16 7. In the State Court Action, the matter in controversy exceeds the sum of \$75,000.00,
 17 exclusive of interest and costs.

18 The Complaint in this action alleges that Defendant was negligent in maintaining the
 19 subject premises and in hiring, training, and supervising its employees, which caused Plaintiff to
 20 slip and fall. *Exhibit A* 3:1-5:26. Plaintiff seeks to recover general and special damages, as well
 21 as attorneys’ fees and costs. *Id.* at 6:4-7. Plaintiff alleges she sustained physical and mental pain
 22 and suffering as a result of the subject accident. *Id.* at 10:29. In the Complaint, Plaintiff prayed
 23 for general damages in excess of \$15,000. *Id.* at 6:4.

24 Nevada rules require that, if a plaintiff seeks any damages over \$15,000, the Complaint
 25 must only include a request for damages “in excess of \$15,000 without further specification of
 26 amount.” *NRCP* 8(a)(4). Thus, plaintiffs in Nevada are prohibited from including a calculation of
 27 actual damages sought in their Complaints. As such, the Court must look elsewhere to determine
 28 appropriateness for removal.

1 A defendant's duty is not to prove by a preponderance of the evidence that the plaintiff is
 2 likely to recover an amount in excess of the threshold. Rather, the jurisdictional minimum in
 3 diversity cases is determined by the amount at stake to either party. *Hamrick v. REO Props.*
 4 *Corp.*, 2010 U.S. Dist. LEXIS 85073 (D. Nev. 2010). In other words, the amount in controversy
 5 is satisfied when the plaintiff's potential gain exceeds the jurisdictional limit. *Id.* The pertinent
 6 question the Court is to ask is whether or not plaintiff is likely to ask a jury for an amount above
 7 \$75,000.00. *Canonico v. Seals*, 2013 U.S. Dist. LEXIS 60047 (D. Nev. 2013). As such, the
 8 appropriate figure to use in determining whether a defendant presents adequate evidence to
 9 establish the amount in controversy is not the probable amount that Plaintiff will recover, but
 10 rather the total potential value of Plaintiff's claims considering all of the allegations and all the
 11 asserted damages. If Defendant can show by a preponderance of evidence that (1) Plaintiff is
 12 likely to ask from the jury an amount over the jurisdictional threshold, or (2) were a jury to award
 13 Plaintiff full recovery, that award would be over the jurisdictional threshold, then jurisdiction with
 14 the Federal Court should remain.

15 According to Plaintiff's Request for Exemption from Arbitration, Plaintiff's past medical
 16 specials totaled only \$52,087.37, thus, it was questionable whether the jurisdictional minimum to
 17 remove the instant matter would be satisfied. *Request for Exemption from Arbitration*, attached
 18 hereto as **Exhibit D**.

19 Moreover, Plaintiff's Initial and First Supplemental NRCP 16.1 Disclosures included a
 20 computation of damages that totaled only \$55,228.28 and \$57,703.28, respectively. *Plaintiff's*
 21 *Initial NRCP 16.1 Disclosure* at 6:5, attached hereto as **Exhibit E** (exhibits omitted); *Plaintiff's*
 22 *First Supplemental NRCP 16.1 Disclosure* at 6:17, attached hereto as **Exhibit F** (exhibits
 23 omitted).

24 8. The case became removable on June 20, 2020, when Plaintiff produced a writing
 25 from which it may be first ascertained that the case is removable. 28 U.S.C. § § 1446(b).
 26 Specifically, Plaintiff's Response to Defendant's Request for Admission No. 7, admitted that her
 27 "total damages for all claims exceed \$75,000" thereby satisfying the jurisdictional threshold of an
 28 amount in controversy over \$75,000. *Plaintiff's Responses to Defendant's Requests for*

1 *Admissions* at 3:11-15, attached hereto as **Exhibit G**.

2 9. This action is a civil action of which this Court has original jurisdiction under 28
3 U.S.C. §1332. Because the parties are diverse and the amount in controversy exceeds \$75,000.00,
4 exclusive of interest and costs, pursuant to 28 U.S.C. §1441 Defendant is entitled to remove this
5 action to this court.

6 10. This notice is filed timely pursuant to 28 U.S.C. §1446(b)(3). Thirty days have not
7 elapsed since the case became removable on June 20, 2022.

8 11. The State Court Action commenced on August 25, 2021, and therefore, one year
9 has not elapsed before the date of this removal.

10 12. Based on the foregoing, Defendant respectfully submits that (a) there is diversity of
11 citizenship between Plaintiff and Defendant, effective June 20, 2022, and b) the amount in
12 controversy exceeds \$75,000.00. This action is therefore properly removed to the United States
13 District Court for the District of Nevada.

14 13. A true and correct copy of this Notice of Removal will be filed with the Clerk for
15 the Eighth Judicial District Court, Clark County, Nevada.

16 14. Based on the foregoing, Defendant removes the claims against it currently pending
17 in the Eighth Judicial District Court, Clark County, Nevada as Case No. A-21-840107-C.

18 DATED this 20th day of July, 2022.

19 LEWIS BRISBOIS BISGAARD & SMITH LLP
20

21 By /s/ Laureen P. Frister
22 LAUREEN P. FRISTER, ESQ.
23 Nevada Bar No. 13217
24 VIVIENNE RAKOWSKY, ESQ.
25 Nevada Bar No. 9160
26 *Attorneys for Defendant Lowe's Home Centers,*
27 *LLC d/b/a Lowe's*
28

CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b), I certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP, and that on this 20th day of July, 2022, I did cause a true and correct copy of the foregoing **PETITION FOR REMOVAL UNDER 28 U.S.C. § 1441 (DIVERSITY)** in *Maria Rosario Munoz v. Lowe's Home Centers, et. al.* to be served via the Court's CM/ECF filing System.

Jacob S. Smith, Esq.
HENNES & HAIGHT
8972 Spanish Ridge Avenue
Las Vegas, NV 89148
Phone: (702) 862-8200
Facsimile: (702) 862-8204
Email: jake@hennessandhaight.com
Attorney for Plaintiff

By /s/ Lucille Quintana
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP